Office - Supreme Court, U.S.
FILED
NOV 14 1945
CHARLES ELMORE CROPLEY
CLERK

(15)

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

No. 469

COMPTON-DELEVAN IRRIGATION DISTRICT,
Petitioner,

vs.

MILO W. BEKINS and REED J. BEKINS, as Trustees under the Last Will and Testament of Martin Bekins, Deceased,
Respondents.

RESPONDENTS' REPLY TO PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

W. COBURN COOK,
Berg Building, Turlock, California,
Attorney for Respondents.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

	Page
Statement of the Case	2
Argument	6
I. There was no error in the decree requiring that the moneys belonging to the respondents be paid to them, although more than a year had elapsed since the entry of the final decree, from which no appeal had been taken	6
II. There are no intervening vested rights	10
Conclusion	10

Table of Authorities Cited

Cases

	Page
Decatur Bank v. St. Louis Bank, 21 Wall. 294	8
Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U. S. 238, 64 S. Ct. 997	8
Nolander v. Butte Valley Irrigation District, 132 Fed. (2d) 704	8
Pickford v. Talbot, 225 U. S. 651, 32 S. Ct. 687	8
Wayne United Gas Co. v. Owens-Illinois Glass Co., 300 U. S. 131, 57 S. Ct. 382	9
Wright v. Board of Public Instruction, 142 Fed. (2d) 577	9

Statutes

Bankruptcy Act, Section 386	9
Bankruptcy Act, Chapters X, XII and XIII, Sections 119, 413 (3) and 616 (2)	9
Title 11, U. S. C. A., Section 403 (b)	2

Texts

Collier, 14 Ed., Vol. 8, p. 176, n. 1	9

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 469

COMPTON-DELEVAN IRRIGATION DISTRICT,
Petitioner,

vs.

MILO W. BEKINS and REED J. BEKINS, as Trustees under the Last Will and Testament of Martin Bekins, Deceased,
Respondents.

RESPONDENTS' REPLY TO PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Milo W. Bekins and Reed J. Bekins as trustees under the last will and testament of Martin Bekins, deceased, respondents, reply to the petition for writ of certiorari in the above entitled matter and pray that said petition be denied.

STATEMENT OF THE CASE.[1]

The pertinent facts of the case are well stated in the opinion of the court below. (R. 105.) (150 F. (2d) 526.)

Certain additional facts pertaining to the case should be stated as follows:

Title 11, U. S. C. A., Sec. 403 (b), provides:

> "Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing."

---

[1]Throughout this reply the Compton-Delevan Irrigation District will be referred to as the "district".

The district judge, upon the filing of the bankruptcy petition, made an order fixing the time and place of the hearing on the petition and prescribed the form of notice. (R. 17.)

The notice, the form of which was embodied in this order, contained the following requirements relative to filing claims:

> "Notice is further given that the claims and interests of creditors of said Compton-Delevan Irrigation District shall be filed or evidenced herein on or before said 14th day of February 1942 in the following manner:
>
> Each such creditor shall file with the Clerk of this Court a verified statement of the claim or interest of such creditor, bearing the title of this matter and setting forth the nature and amount of such claim or interest.
>
> If such claim or interest is evidenced by a bond or bonds issued by said petitioner and interest coupons appertaining to such bond or bonds, the bond or bonds held or owned by the creditor shall be described by giving designation of the issue to which said bond or bonds belong, their respective serial numbers, and principal amounts, their maturity date, and the numbers of any interest coupons which appertain to the respective bonds."

Pursuant to this notice the respondents properly filed their claim as required by the order on January 26, 1942. (R. 22.) Respondents assumed that they had done all that was required. They had filed their claim as provided by the court's order. It was assumed that in due course they would receive the distribution provided by the plan of composition.

The order determining the manner in which claims should be evidenced and filed did not require anything whatever as to deposit of the bonds, but merely required the making of a verified claim by the creditor.

Respondents did not appear at the hearing nor did they contest the petition for the confirmation of the composition.

An interlocutory decree was entered confirming the plan of composition. The interlocutory decree for the first time made a different provision as to the manner of evidencing claims, for it required that "the holders of said bonds be and they are hereby required to deposit said bonds, with unpaid interest coupons attached, with the disbursing agent before payment is made as herein provided; * * *" (R. 28.)

It will be observed, however, that the decree did not say that creditors were barred from asserting any claim against the funds, but merely that they would be barred from asserting any claim against the district should they fail to deposit their bonds. (R. 29, 30.)

On August 17, 1942, the final decree was obtained. (R. 38.) The final decree for the first time contained the provision that creditors would be barred from participating in the funds if they did not deposit their bonds within a twelve-month period (the interlocutory decree had fixed a thirty-day period). (R. 36.)

Respondents failed to present their bonds. The record is clear that they had no direct or other knowledge of the provisions of the interlocutory or final decree

relating to the time limit on depositing bonds. Eventually ascertaining their situation they presented to the court (R. 38) the motion which is the subject of this contest for an order for payment of their claim, and requested that if necessary the final decree be modified to extend the time so as to relieve them from any default that there might be. (R. 38.) Amongst other things, the showing made was that Reed J. Bekins and Milo W. Bekins are trustees appointed by the will of Martin Bekins, deceased; that Reed J. Bekins became ill shortly after the bankruptcy petition was filed, and was unable to attend to business affairs. He failed on account of his illness to seek relief sooner.

Respondent contended however that the deposit of the bonds was an unnecessary requirement inasmuch as they had already filed their claim. (R. 42.) The time for depositing the bonds as provided in the final decree had expired on August 17, 1943. The request to the court for relief was not made until August 18, 1944.

By the counter-affidavit in opposition to the motion (R. 45), a great deal of extraneous matter was brought into the record, and is argued in the petition for writ of certiorari. (R. 49.) From this extraneous matter petitioner seeks the inference that because the undersigned counsel had been attorney for the Bekins' interest in other cases, and in this case had filed claims for other parties, some sort of notice was imputed to the respondents. Petitioner even goes to the extreme length of urging in its petition (page 13 of Petition for Writ of Certiorari herein) that because the Bekins trustees have appeared before this court in other bank-

ruptcy proceedings, and because the undersigned counsel has represented them in some of these matters that the Bekins were fully familiar with the bankruptcy act, and therefore their failure to present their bonds within the year is "inexcusable". This line of argument hardly seems to require even the dignity of a reference, let alone a reply, and none is made.

Other extraneous matter, and which is made the subject of one of its points for reversal and granting of the writ, pertains to the so-called "intervening" rights. The court below in its opinion states bluntly that the record discloses no vested intervening rights. (R. 116.) This is correct. The only so-called intervening rights alluded to in the record are those claimed by the counter-affidavit of Mr. Jerome D. Peters. (R. 45.) Respondents submit that vested rights cannot be so shown nor become matters of record in the case by means of a counter-affidavit addressed to a motion after trial. No parties appeared in the cause claiming such rights nor do they now appear to assert such claimed rights.

ARGUMENT.

I. THERE WAS NO ERROR IN THE DECREE REQUIRING THAT THE MONEYS BELONGING TO THE RESPONDENTS BE PAID TO THEM, ALTHOUGH MORE THAN A YEAR HAD ELAPSED SINCE THE ENTRY OF THE FINAL DECREE, FROM WHICH NO APPEAL HAD BEEN TAKEN.

The decision of the court below may be supported on many grounds. In the first place, the composition moneys belonged to the respondents and not to the petitioner herein. As has been pointed out, the re-

spondents filed their claim as provided by the court's order. This order has never been modified nor changed. The claim entitled the respondents to payment without anything further. There is nothing in the municipal bankruptcy act which would appear to require the surrender of the evidence of the debt. As the court's order was made pursuant to the statute and as the claim was filed pursuant to the order, respondents were entitled to payment. They did not know that any further orders were made in the matter. They were not represented by counsel in the case. What the Circuit Court has done is merely to order that despite the terms of the final decree, the moneys which belonged to the respondents be paid to them.

Secondly, the petitioner has no standing in the matter; it is and should be unaffected by the disposition of those moneys. In all justice the decree should have provided that forfeited money should be paid to other creditors, but not being paid to other creditors they could not become the property of the bankrupt.

Thirdly, the motion was not an appeal from the final decree; it was merely a request to the court having jurisdiction that the intention of the proceeding be carried out and the moneys paid to the respondents, despite the terms of the final decree.

Fourthly, the provision of the final decree which limits to a period of one year the right of a creditor to be paid where he has filed a claim, and requires him to do something other than that required by the previous order, should be considered null and void. There is no conflict between the decision in this case and in

the case of *Nolander v. Butte Valley Irrigation District,* 132 Fed. (2d) 704. In that case the court in its opinion stated:

> "At the hearing it became evident that the appellant was not prejudiced, and she has no further standing here to make the contention."

Citing *Decatur Bank v. St. Louis Bank,* 21 Wall. 294, 301. But in the instant case the creditor is hurt by the order because the year has gone by. There is no conflict between the *Nolander* case and the present case.

Lastly, in the case of *Hazel-Atlas Glass Co. v. Hartford Empire Co.,* 322 U. S. 238, 64 S. Ct. 997, the Supreme Court of the United States reviews the principles relating to relief from judgment. Here the court, many years after the entry of the decision in 1932 permits the reopening of the case by a bill to review in the Circuit Court of Appeals. The court declared that the federal courts long ago established the general rule that they would not alter nor set aside their judgments after the expiration of the term, but from the beginning it is declared there has existed alongside the term rule a rule of equity in effect that under certain circumstances relief will be granted against judgments, regardless of the term of their entry. Where the occasion has demanded and where the enforcement of the judgment is "manifestly unconscionable", the court will exercise this power. (*Pickford v. Talbot,* 225 U. S. 651, 32 S. Ct. 687, 689.) Customarily this has been accomplished by bills of review, bills in the nature of bills of review, or by original proceeding to enjoin enforcement of the judgment, and the relief granted has taken several different

forms, setting aside the judgment to permit a new trial, altering the terms of judgment, restraining the beneficiary of the judgment from taking any benefit.

It seems elemental that if the relief is justified the form should cut no figure.

See also

Wright v. Board of Public Instruction, 142 Fed. (2d) 577;

Wayne United Gas Co. v. Owens-Illinois Glass Co., 300 U. S. 131, 57 S. Ct. 382.

We respectfully suggest also that whereas time limits are prescribed by various sections of the bankruptcy act setting aside or modifying an arrangement or other settlement or order (e.g. Bankruptcy Act, Sec. 386), it would appear that there is no specific time limit fixed within which a decree may or may not be modified under the provisions of Chapter IX of the Bankruptcy Act.

Under Chapter XI the power is expressly conferred to extend any time limit upon cause shown. (See 313 (3), Bankruptcy Act.) The same power is conferred under Chapters X, XII and XIII, by Sections 119, 413(3) and 616(2). (Collier, 14 Ed., Vol. 8, p. 176, n. 1.) Chapter IX is silent both upon the power to fix the time limit in question or to extend it. But one thing the statute does prescribe is that "The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing." This he did, and the appellants fully complied with the order.

II. THERE ARE NO INTERVENING VESTED RIGHTS.

As shown above the only claimed vested intervening rights are those referred to in the affidavit of Jerome D. Peters. Such rights are not thus made a part of the record, nor are the parties interested parties. They have no standing in the case.

But further than that, the rights which are claimed are not intervening vested rights. The only intervening vested rights are those which would pertain to these funds. If these funds had been allotted to other creditors, then there would be intervening rights. Here the bankrupt cannot claim them. They do not belong to the bankrupt. The bankrupt is simply not concerned. The landowners are not parties to the proceedings nor do they attempt to intervene, nor have they acquired any rights in the funds.

CONCLUSION.

It is respectfully submitted that the petition be denied.

Dated, Turlock, California,
November 9, 1945.

Respectfully submitted,
W. COBURN COOK,
Attorney for Respondents.